

Natasha Meruelo, Esq., NM4458
Attorney for the Debtor
99 Church Street, 4th Floor, Suite 401
White Plains, NY 10601

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Hearing Date: February 13, 2019
Hearing Time: 10:00 AM

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IN RE:

**Charles S. Harris, Jr.
AKA Crist Swann**

**CHAPTER 13
CASE NO: 18-22620-rdd**

Debtor.

NOTICE OF MOTION

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PLEASE TAKE NOTICE that Charles S. Harris, Jr., AKA Crist Swann (the “Debtor”), by and through his attorney of record, has filed a motion with the United States Bankruptcy Court, SDNY, pursuant to FRBP 3002.1(a) and (e), to disallow post-petition fees, expenses and/or charges claimed by Bayview Loan Servicing LLC, a Delaware Limited Liability Company (“Bayview”) pursuant to notice of post-petition mortgage fees, expenses and charges filed on or about July 6, 2018 in this bankruptcy case (“Motion”).

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought by the Debtor in this Motion, or if you want the court to consider your views on the Motion, then on or before February 6, 2019, you or your attorney must:

File a written response, an answer, explaining your position at:

United States Bankruptcy Court Clerk
Southern District of New York
300 Quarropas Street

White Plains, NY 10601
Attn: Honorable Robert D. Drain

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also send a copy to:

Natasha Meruelo, Esq.
99 Church Street, 4th Floor, Suite 401
White Plains, NY 10601

and to:

Krista M. Preuss, Esq.
As Chapter 13 and 12 Trustee
399 Knollwood Road, Suite 102
White Plains, NY 10603

Attend the hearing scheduled for February 13, 2019 at 10:00 A.M. at the United States Bankruptcy Court, 300 Quarropas Street, 1st Floor (Hon. Robert D Drain), White Plains, NY 10601. White Plains, NY 10601.

If you or your attorney do not take these steps the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.

Dated: December 7, 2018



Natasha Meruelo, Esq.
Attorney for the Debtor
99 Church Street, 4th Floor, Suite 401
White Plains, NY 10601

TO:

Bayview Loan Servicing, LLC, a Delaware Limited Liability Company
C/O Jenelle C. Arnold

Aldridge Pite, LLP
4375 Jutland Drive, Suite 200
PO Box 17933
San Diego, CA 92177-0933

Address set forth in Notice of Post Petition Fees and Notice of Appearance

Bayview Loan Servicing, LLC
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, FL 33146
Proof of Claim Noticing Address

Richard T. O'Brien, President and COO
Bayview Loan Servicing, LLC
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, FL 33146

Charles S. Harris, Jr.
39 Primrose Avenue
Mount Vernon, NY 10552

Krista M. Preuss, Esq.
As Chapter 13 and 12 Trustee
399 Knollwood Road
Suite 102
White Plains, NY 10603

Chambers Copy to:

Honorable Robert D. Drain
US Bankruptcy Court, SDNY
300 Quarropas Street
White Plains, NY 10601

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE:

**Charles S. Harris, Jr.
AKA Crist Swann**

**CHAPTER 13
CASE NO: 18-22620-rdd**

Debtor.

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**DEBTOR'S MOTION TO DISALLOW POST-PETITION FEE AMOUNT PURSUANT
TO NOTICE OF POST-PETITION MORTGAGE FEES, EXPENSES, AND CHARGES
FILED BY BAYVIEW LOAN SERVICING LLC**

COME NOW the above-named debtor, Charles S. Harris, Jr., AKA Crist Swann (“Debtor”), by and through his attorney of record, Natasha Meruelo, pursuant to Fed.R.Bankr.P. 3002.1(e) and respectfully objects to the Notice of Post-Petition Mortgage Fees, Expenses, and Charges (“Notice”) filed in this case by Bayview Loan Servicing, LLC, a Delaware Limited Liability Company (“Bayview”) on or about July 6, 2018 as follows:

PRELIMINARY STATEMENT

1. This Chapter 13 case was commenced by the filing of a petition with the Clerk of this court on April 27, 2018.
2. The Debtor, Charles Harris (hereinafter the “Debtor”) is the owner of real estate located at 39 Primrose Avenue, Mount Vernon, NY 10552 (the “Real Property”).
3. A proof of claim related to a junior mortgage lien and related debt for which Bayview filed the Notice was filed in this case on or about July 6, 2018 as Proof of Claim 6 (“Claim 6”).

4. The mortgage debt that is the subject of Claim 6 is wholly unsecured, as set forth by this Court's Order signed on December 6, 2018 Granting the Debtor's motion to avoid this junior mortgage lien.
5. On July 16, 2018, Bayview, by its attorney of record, filed the Notice, which consisted of:
 - 5.1. Bankruptcy/Proof of Claim Fees of \$400.00 purportedly incurred on 7/6/2018;
 - 5.2. Plan review fee of \$250.00 purportedly incurred on 5/23/2018; and
 - 5.3. 410A Loan Payment History Fee of \$250.00 purportedly incurred on 7/6/2018.

See Exhibit A.

6. The amounts claimed in Bayview's Notice should be disallowed as 1) the Debtor's Chapter 13 plan does not provide for payment of postpetition contractual installments on this debt and 2) Claim 6 is not secured. Furthermore, none of the fees in the Notice are required to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.
7. In addition, the Debtor objects to the Bankruptcy/Proof of Claim Fees of \$400.00 and 410A Loan Payment History Fee of \$250.00 on the basis that they are excessive and unreasonable and based on duplicative work. Both fees were supposedly incurred on 7/6/2018 and appear to be related to Claim 6 filed by Bayview. The Debtor should not be charged twice for work related to this one task done on 7/6/18, which Bayview attempts to do by seeking payment for separate fees.
8. An analogous issue was addressed by the *Boyd* Court, which found that services rendered in connection with a proof of claim and for an objection to confirmation were based on duplicative work and that in light of the duplication, the total fees charged should be reduced.

In re Boyd, 12-80400-G3-13 (Bankr. S.D. Tex. 2013).

WHEREFORE, the Debtor respectfully requests this Court to issue an Order:

- A. Disallowing the fees claimed in the Notice, in their entirety; and
- B. Awarding the Debtor any other and further relief as the Court may deem just and proper.

Dated: December 7, 2018



Natasha Meruelo, Esq.
Attorney for the Debtor
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White Plains, NY 10601